

**Rule 3, Ariz. R. Crim. P.**

**When arrest is effected for purposes of search incident to arrest, distinguished from when a person is under arrest for purposes of constitutional protections.....  
.....Revised 2/2010**

The word “arrest” has a different meaning for purposes of the crime of resisting arrest in violation of A.R.S. § 13-2508<sup>1</sup> and for purposes of when a person is under arrest for purposes of constitutional protections relating to searches and interrogation of suspects. *State v. Mitchell*, 204 Ariz. 216, 62 P.3d 616 (App. 2003), dealt with the question of when an arrest is complete for purposes of resisting arrest and held that a person can resist arrest even though officers have already handcuffed him. In that case, an officer told Mitchell he was under arrest for disorderly conduct and another officer handcuffed Mitchell’s arms behind his back. The officers began to escort Mitchell to a police car, but he pulled away and struggled, injuring one of the officers before they could subdue him.

A jury found Mitchell guilty of disorderly conduct and resisting arrest charges and he appealed the resisting arrest conviction. Mitchell argued that the trial court erred in denying his Rule 20 motion “because the conduct on which the charge was based took place after the arrest was complete.” *Mitchell* at 218, ¶ 10, 62 P.3d at 618. Mitchell argued that under A.R.S. § 13-3881, an arrest is “made by an actual restraint of the person to be arrested,” so nothing that he did after he was handcuffed could be considered resisting arrest. *Id.* at ¶ 14. He also argued that the trial court should have

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<sup>1</sup>A.R.S. § 13-2508 provides in part: “A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest by ... using or threatening to use physical force against the peace officer ....”

instructed the jury that an arrest is complete when the police restrict a person's movement. The State argued in response that the police had not yet "effected" Mitchell's arrest when they were taking him to the police car. *Id.* at ¶ 10.

The Court of Appeals thus had to interpret the meaning of "effecting an arrest" in § 13-2508. The Court stated, "[E]ffecting an arrest" is "a process with a beginning and an end" and "may not be limited to an instantaneous event, such as handcuffing." *Id.* at ¶ 13. The Court rejected Mitchell's § 13-3881 argument, stating that § 13-3881 primarily defines *how* an arrest is made, not *when* an arrest is effected within the meaning of the resisting arrest statute.

Determining *when* an arrest process has been completed requires a case-by case analysis of the facts in the light of the "effecting an arrest" language from § 13-2508. While an arrest as defined by § 13-3881 is characterized by actual restraint or submission, the phrase "effecting an arrest" in § 13-2508 connotes successful, effective restraint of submission of the person.

*Id.* at 218-219, ¶15, 62 P.3d at 618-619. [citations omitted, emphasis in original]. Since the legislature criminalized physical resistance to arrest with the intent to protect officers and citizens from risk of injury, accepting Mitchell's argument would fail to achieve the legislative intent. *Id.* at ¶ 16. The Court declined to "articulate any bright-line test for determining when an arrest has been completed – effected – for resisting arrest purposes," *id.* at ¶ 18. The Court recognized that many constitutional law cases say that an arrest is "complete" as soon as the suspect's liberty of movement is interrupted and restricted by police. See, e.g., *State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986) quoting *State v. Winegar*, 147 Ariz. 440, 447-448, 711 P.2d 579, 586-587 (1985) ("[A]n arrest is complete when the suspect's liberty of movement is interrupted and restricted by the police."); *State v. Leslie*, 147 Ariz. 38, 43, 708 P.2d 719, 724 (1985).

However, the *Mitchell* Court cautioned, “constitutional protections regarding searches and interrogations address different considerations than are applicable here and may produce different results.” *Mitchell*, 204 Ariz. at 229-220, ¶ 19, 62 P.3d at 619-620. Thus, while a person whose liberty has been restricted in any way may be “under arrest” for purposes of when certain constitutional rights attach, “for purposes of the crime of resisting arrest in Arizona, the arrest may not yet have been ‘effected’ on the same person.” *Id.* at 220, ¶ 19, 62 P.3d at 620. “The completion of the arrest process for purposes of the resisting arrest statute requires the successful, effective restraint or submission of the person being arrested.” *Id.* at ¶ 21.